

No. 76-164

Supreme Court, U. S.  
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MICHAEL RODAK, JR., CLERK

**In the Supreme Court of the United States**

**OCTOBER TERM, 1976**

**SANTOS CAMPOS CAMPOS, PETITIONER**

**v.**

**IMMIGRATION AND NATURALIZATION SERVICE**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**MEMORANDUM FOR THE RESPONDENT IN OPPOSITION**

**ROBERT H. BORK,  
Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.**

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Petitioner attacks an order of deportation on the grounds that (1) the underlying criminal conviction, upon which the order was based, was defective; (2) the conviction is not final because of the possibility of his petitioning for a writ of error *corum nobis*; and (3) the order of deportation constitutes cruel and unusual punishment.

On July 28, 1972, petitioner, a citizen of Mexico, pleaded guilty in California state court to a charge of possessing heroin for sale, in violation of Section 11500.5 of the Health and Safety Code of California.<sup>1</sup> The Immigration and Naturalization Service thereafter instituted deportation proceedings against petitioner. At a hearing

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<sup>1</sup>We are lodging with the Clerk of this Court copies of official documents introduced at petitioner's deportation hearing, the transcript of that hearing, and the decisions of the immigration judge and the Board of Immigration Appeals.

before an immigration judge on June 16, 1975, petitioner, represented by counsel, acknowledged that he had entered the United States as an immigrant in August 1958 and that he had been convicted in state court of possessing heroin for sale. When petitioner's counsel attempted to discuss the underlying conviction, the immigration judge stated that he did not have the authority to consider challenges to petitioner's conviction in the context of a deportation proceeding but that petitioner could seek relief from the conviction in state court. The judge thereafter ruled that petitioner was deportable under Section 241(a) (11) of the Immigration and Nationality Act, 66 Stat. 206, as amended, 8 U.S.C. 1251(a)(11). The Board of Immigration Appeals dismissed petitioner's appeal from the deportation order. The court of appeals affirmed (Pet. App. A), and denied a petition for rehearing with a suggestion for rehearing *en banc* (Pet. App. B).

None of the contentions made by petitioner in this Court entitles him to relief from the deportation order. Petitioner evidently claims that when he pleaded guilty in state court to having possessed heroin for sale he was not made aware of the possibility of his consequent deportation. It is settled, however, that a person entering a guilty plea cannot challenge the validity of that plea in the context of a deportation proceeding. *E.g.*, *Rassano v. Immigration and Naturalization Service*, 377 F. 2d 971, 974 (C.A. 7); *Giammario v. Hurney*, 311 F. 2d 285, 287 (C.A. 3). The fact that petitioner may yet be able collaterally to challenge his guilty plea on a writ of error *corum nobis*—which provides relief “of the same general character as [relief] under 28 U.S.C. §2255” (*United States v. Morgan*, 346 U.S. 502, 505-506 n. 4)—does not affect the finality of his state conviction for deportation purposes. See *Oliver v. Immigration and Naturalization Service*, 517 F. 2d 426, 428 (C.A. 2), certiorari denied, 423 U.S. 1056; *Aguilera-*

*Enriquez v. Immigration and Naturalization Service*, 516 F. 2d 565, 570-571 (C.A. 6), certiorari denied, 423 U.S. 1050.

Finally, an order of deportation is civil, rather than penal, in nature; thus, petitioner cannot avail himself of the Eighth Amendment's prohibition against cruel and unusual punishment. As Mr. Justice Holmes stated in *Bugajewitz v. Adams*, 228 U.S. 585, 591, in which this Court held that the constitutional prohibition against *ex post facto* laws does not apply to deportation proceedings:

It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the Government to harbor persons whom it does not want.

See also *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 285; *Harisiades v. Shaughnessy*, 342 U.S. 580, 594.<sup>2</sup>

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,  
Solicitor General.

NOVEMBER 1976.

<sup>2</sup>Petitioner also “asks this Court to consider \* \* \* for the future” (Pet. 7) a relaxation of admission requirements to permit any attorney to practice before the Court who has been admitted to practice before any state or federal court. To the extent that petitioner is advancing this suggestion as a basis for relief here, it must be rejected. Petitioner has not shown that this Court's present admission requirements are unreasonable or that such requirements (which include means for obtaining permission to represent a client *pro hac vice*) have forced him to proceed in this Court *pro se*.